



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2007 FEB -8 AM 10:51

EPA REGION VIII
HEARING CLERK

FEB - 8 2007

Ref: Mail Code: 8ENF-AT

**CERTIFIED MAIL
RETURN-RECEIPT REQUESTED**

Mr. Tyler Theobald
9278 N. Silver Lake Dr
Cedar Hills, UT 84062

Re: **SUBPOENA DUCES TECUM** issued pursuant to
the Toxic Substances Control Act §11, 15 United
States Code § 2610

DOCKET NO.: TSCA-08-2007-0002

Dear Mr. Theobald:

You are hereby served with the enclosed **SUBPOENA DUCES TECUM** by the United States Environmental Protection Agency ("EPA"). EPA is investigating whether you have complied with the Real Estate Notification and Disclosure Rule, which has been codified at 40 C.F.R. Part 745, Subpart F ("Disclosure Rule"). The Disclosure Rule was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 15 USC section 2681, *et seq.*

The Toxic Substance Control Act ("TSCA") § 11, 15 United States Code § 2610, authorizes the EPA Administrator to require a regulated entity to produce reports, papers, documents and other information, as necessary, to gather information about any chemical substance, such as lead, by issuing a subpoena. The Administrator has delegated to me the authority to issue this subpoena. Pursuant to this authority, you must provide the information and documents in your possession, control, or the possession, or control of your employees, agents, servants, consultants or attorneys, as it pertains to the subject matter in the enclosed **SUBPOENA DUCES TECUM**.

Under TSCA § 16, EPA is authorized to seek civil penalties of up to \$32,500 per day of violation of any of the provisions of TSCA, including your failure or refusal to submit the information required by this action, or, in the case of knowing or willful violations, criminal fines of up to \$27,500 per day of violation and/or imprisonment up to one year. In addition, the Criminal Fines Enforcement Act of 1984, P.L. 98-596, provides for fines in excess of the amount specified in these statutes under certain circumstances.



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Pursuant to the regulations appearing at 40 C.F.R. Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering any part of the submitted information, subject to EPA's evaluation of the information's confidential status. Unless such a confidentiality claim is asserted at the time the required information is submitted, EPA may make this information available to the public without further notice to you. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above-cited regulations. Any such claim for confidentiality must conform to the requirements set forth in 40 C.F.R. § 2.203(b).

If any portion of your response(s) to this action contains information which you claim as business confidential, you should submit that portion of the response in accordance with the following procedures. The material itself should be marked conspicuously to indicate that it is claimed confidential. It should be placed in an envelope addressed to the EPA representative identified at the end of this action. The envelope should be marked "Confidential - To be Opened By Addressee Only." The envelope should then be placed in a second, "outer" envelope with non-confidential documents addressed to Dana J. Stotsky at the following address.

U.S. Environmental Protection Agency Region 8
Mail Code 8ENF-L
1595 Wyncoop Street
Denver, CO 80202-1129

This subpoena requests you to supply the specified information by mail. Please see the sample affidavit enclosed for this purpose. Appearance in person is not necessary. Should you elect to respond to this subpoena by mail, please send your response to:

Mr. Daniel Webster
U.S. Environmental Protection Agency Region 8
Mail Code 8ENF-T
1595 Wyncoop Street
Denver, CO 80202-1129

If you have any questions concerning this subpoena, please contact Dana Stotsky, an EPA attorney, at 303-312-6905.

Sincerely,



Martin Hestmark, Director
Technical Enforcement Program

enclosures



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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:
Mr. Tyler Theobald
9278 N. Silver Lake Dr
Cedar Hills, UT 84062

Subpoena Duces Tecum

TO: Tyler Theobald, 9278 N. Silver Lake Dr, Cedar Hills, UT 84062

YOU ARE HEREBY COMMANDED, pursuant to Toxic Substances Control Act § 11(c), Title 15 United States Code § 2610(c) at the time and place stated below, and then and there produce for inspection and/or copying by U.S. Environmental Protection Agency, those items identified and described on the **ATTACHMENT** which are possessed by you or are under your control:

DATE AND TIME: 03:00 PM, March 14, 2007, in the second floor conference center at the address listed below (or you may provide by certified mail to the address on the letterhead, Mail Code 8ENF-L not later than March 12, 2007).

PLACE: U.S. Environmental Protection Agency
Region 8 Mail Code 8ENF-L
1595 Wyncoop Street
Denver, CO 80202-1129

You are hereby advised that the U.S. Environmental Protection Agency is authorized to seek both civil penalties and criminal sanctions for violations of the Toxic Substances Control Act § 16, 15 United States Code § 2615, and of any other environmental statute which you may be found to have violated. All information disclosed pursuant to this subpoena will be evaluated in accordance with said powers.

FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN A COURT ACTION AGAINST YOU.

Issued on February 8, 2007



Martin Hestmark, Director
Technical Enforcement Program



Michael Risner, Director
Legal Enforcement Program

Attorney Contact: Dana Stotsky
Senior Enforcement Attorney

David J. Janik
Supervisory Attorney

I. INFORMATION AND DOCUMENTS TO BE PROVIDED:

The information requested herein requires you to provide to EPA all leasing agreements entered into between **Tyler Theobald**, Lessor/Agent, and any Lessees for the time period from January 1, 2004 to the date of the cover letter attached hereto.

1. Identify and produce a list of all properties leased by **Tyler Theobald** as owner, manager or leasing agent. List the dates each property has been leased for the time period from January 1, 2004 to the date of the cover letter attached hereto.
2. Identify and produce copies of all documents, such as leases, addendums and pamphlets, relating to lease transactions of target housing. These documents should include the name of any Lessor, Lessee, and Agent who is or was involved in the lease of each target housing provided in this question, specifically: **3816 S 300 E, Salt Lake City, UT** and any other properties leased by **Tyler Theobald** as owner, manager or leasing agent.
3. Identify and produce copies of all documents, such as reports or analyses, relating to any lead-based paint or lead-based paint hazard risk assessment of any kind which was conducted for any target housing provided in question 2 herein. Include copies of any Lead-Based Paint Disclosure Forms provided to the tenants at the time of signing the lease. Include information for each apartment/home to include the apartment/home number, name of the lessee, ages of children, number of children, and if any Federal Section 8 housing is involved.
4. Please state whether or not you provided the EPA approved lead hazard information pamphlet to the tenants before or at the time of signing the lease.

II. DEFINITIONS

PLEASE READ THESE DEFINITIONS CAREFULLY TO PROPERLY COMPLY WITH THE TERMS OF THIS SUBPOENA AND DOCUMENT REQUEST.

Unless otherwise defined below, the terms used in this subpoena have the meaning given in Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 40 C.F.R. Part 745, Subpart F.

1. "Agent" and "Broker" mean any party who enters into a contract with a lessor, including any party who enters into a contract with a representative of the lessor, for the purpose of leasing housing constructed prior to 1978.

2. "Document" means the original or an identical and readable copy thereof, and all non-identical copies (whether different from the original by reason of notations made on such copies or otherwise) of any writings or records of any type or description, however created, produced or reproduced, including but not limited to any final contracts, contingency contracts, riders, agreements, papers, books, records, letters, photographs, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, conferences, or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, charts, manuals, blueprints, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer printouts, data processing program libraries, data processing input and output, microfilm, books of accounts, records and invoices reflecting business operations, all records kept by electronic, photographic or mechanical means, any notes or drafts related to the foregoing, and all things similar to any of the foregoing, however denominated.

3. "Lead-based paint" means paint or other surface coatings which contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

4. "Lead-based paint hazard" means any condition which causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead contaminated paint which is deteriorating or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

5. "Lessee" means any entity that enters into an agreement to lease, rent, or sublease residential property at **3816 S 300 E, Salt Lake City, UT** and any other properties managed by **Tyler Theobald**, in whole or in part; or properties where **Tyler Theobald** has acted as leasing agent, which are leased to tenants, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and nonprofit organizations.

6. "Lessor" means **Tyler Theobald** or any entity that offers residential property at **3816 S 300 E, Salt Lake City, UT** and any other properties managed by **Tyler Theobald**, or in which **Tyler Theobald** has acted as leasing agent for the owner, in whole or in part, for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and nonprofit organizations.

7. "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: information gathering regarding the age and history of the housing and occupancy by children under age 6; visual inspection; limited wipe sampling or other environmental sampling techniques; other activity as may be appropriate; and provision of a report explaining the results of the investigation.

8. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:

Mr. Tyler Theobald
9278 N. Silver Lake Dr
Cedar Hills, UT 84062

AFFIDAVIT RESPONDING TO THE SUBPOENA DUCES TECUM

I, the undersigned affiant, first being duly sworn, upon an oath, depose and say:

1. Attached hereto are _____ pages of photocopies of documents or records. The attached pages are true and correct copies of documents which I presently have in my custody and/or control as an owner and/or employee of: _____ the address of which is _____.
2. I am one of the custodians of the records of which the attached pages are true and correct copies. Those documents have been requested by EPA are being produced along with this affidavit in response to the subpoena.
3. The records (of which the attached pages are true copies) involved here were and/or are received and/or kept in the usual course of the regularly conducted business and activity of the entity listed in paragraph 1 above.
4. I have made a diligent search and inquiry for all records which are reasonably described in the subpoena to which this affidavit responds. I have not found or located, and I have not been told about, and I have no knowledge of, any documents or records coming within the descriptions set forth in the subpoena which have not been copied and submitted along with this affidavit.
5. All responses to the inquiries contained in the aforementioned information request are true, complete and accurate. I acknowledge that this affidavit is submitted to the United States in connection with a matter within the jurisdiction of EPA and that any material false statement of fact herein may be a federal crime under 18 United States Code § 1001.

Date: _____ **Signature:** _____
Type name: _____ **Office or Title:** _____

SWORN AND SUBSCRIBED TO before me, the undersigned Notary Public on this ____ day of _____, 2007. Notary Public in and for the State or Territory of _____, residing at _____.
My Commission expires on: _____.

CERTIFICATION OF SERVICE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

I hereby certify that on this 8 day of February 2007, a copy of the foregoing Subpoena Duces Tecum was served by certified mail, return receipt requested to:

Mr. Tyler Theobald
9278 N. Silver Lake Dr
Cedar Hills, UT 84062

The original was hand-delivered to:

Tina Artemis
Region 8 Hearing Clerk
U.S. Environmental Protection Agency
1595 Wyncoop Street
Denver, CO 80202-1129

Date: 2/8/07

By: Andrea Reed
Andrea Reed
Secretary, Technical Enforcement Program
Enforcement, Compliance and Environmental Justice



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